

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ROBERT B. CIARPAGLINI,

Petitioner,

v.

ORDER

DONALD DUCK STRAHOTA, DANIEL
BRAEMER, C. BOVEE, C.O. KEYS,
MIKE THURMER, BETH LIND and JOE HALL,

07-C-604-S

Respondents.

Petitioner requests leave to proceed in forma pauperis. He alleges that respondents Donald Duck Strahota, Daniel Braemer, C. Bovee, C.O. Keys, Mike Thurmer, Beth Lind and Joe Hall placed a metal wire in an apple he ate. He further alleges that the wire cut his mouth and that respondent Bovee told him to watch his food carefully in the future.

28 U.S.C. §1915(g) states as follows

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

Petitioner Ciarpaglini has on three or more occasions while incarcerated brought civil actions which were dismissed for the reasons listed in §1915(g). These cases are: Ciarpaglini v. Kick, et al., 96-C-427 (June 17, 1996, E.D. Wis.); Ciarpaglini v. Doyle,

96-C-847-S (October 11, 1996, W.D. Wis.) and Ciarpaglini v. Pray, et al., 96-C-598-S (October 11, 1996, W.D. Wis.).

It is possible that petitioner could prove a set of facts that would support an Eighth Amendment claim against the respondents. He alleges he is in imminent danger of serious physical injury. Accordingly, petitioner will be allowed to proceed on his Eighth Amendment claim against the respondents.

ORDER

IT IS ORDERED that petitioner is allowed to proceed on his Eighth Amendment claim against the respondents.

The summons and complaint are being delivered to the United States Marshal for service on respondents Donald Duck Strahota, Daniel Braemer, C. Bovee, C.O. Keys, Mike Thurmer, Beth Lind and Joe Hall at the Waupun Correctional Institution, P.O. Box 351, Waupun, Wisconsin, 53963.

Entered this 25th day of October, 2007.

BY THE COURT:

/s/

JOHN C. SHABAZ
District Judge